

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 573**

**Introduced by Assembly Member Wolk**

February 16, 2005

---

An act to ~~repeal and add~~ Section 2782 of the Civil Code, relating to indemnity.

LEGISLATIVE COUNSEL'S DIGEST

AB 573, as amended, Wolk. Construction contracts: indemnity.

Existing law provides that agreements contained in or affecting any construction contract that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable, except as specified.

~~This bill would repeal this provision and provide, instead, that agreements contained in or affecting any construction contract entered into on or after January 1, 2006, that require a person or that person's insurer to indemnify another against liability for damages arising out of death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from, in whole or in part, the negligence or the willful misconduct of the indemnitee or the indemnitee's agents, servants, or independent contractors who are directly or indirectly responsible to the indemnitee, are against public policy and are void and unenforceable. The bill also would require an indemnitee who has been afforded a defense by an indemnitor to~~

~~reimburse that indemnitor a percentage of costs and fees actually incurred by the indemnitor in that defense, equal to that indemnitee's percentage of comparative negligence or comparative willful misconduct.~~

*This bill would state the intent the Legislature to enact legislation governing the use of indemnification and additional-insured provisions in construction contracts with respect to construction defect disputes, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 2782 of the Civil Code is repealed.~~
- 2     ~~SECTION 1. It is the intent of the Legislature to enact~~
- 3     ~~legislation governing the use of indemnification and~~
- 4     ~~additional-insured provisions in construction contracts with~~
- 5     ~~respect to construction defect disputes in order to expedite the~~
- 6     ~~fair and efficient resolution of these disputes and to address the~~
- 7     ~~availability and cost of liability insurance for builders,~~
- 8     ~~contractors, subcontractors, design professionals, and others, as~~
- 9     ~~well as addressing the cost of housing.~~
- 10    ~~SEC. 2. Section 2782 is added to the Civil Code, to read:~~
- 11    ~~2782. (a) Except as provided in Sections 2782.1, 2782.2,~~
- 12    ~~2782.5, and 2782.6, provisions, clauses, covenants, or~~
- 13    ~~agreements contained in, collateral to, or affecting any~~
- 14    ~~construction contract that require a person or that person's~~
- 15    ~~insurer to indemnify another against liability for damages arising~~
- 16    ~~out of death or bodily injury to persons, injury to property, or any~~
- 17    ~~other loss, damage, or expense arising from, in whole or in part,~~
- 18    ~~the negligence or the willful misconduct of the indemnitee or the~~
- 19    ~~indemnitee's agents, servants, or independent contractors who~~
- 20    ~~are directly or indirectly responsible to the indemnitee, are~~
- 21    ~~against public policy and are void and unenforceable. For~~
- 22    ~~purposes of this subdivision, negligence includes active, passive,~~
- 23    ~~sole, and concurrent negligence by either a private party or a~~
- 24    ~~public agency.~~
- 25    ~~(b) An indemnitee who has been afforded a defense by an~~
- 26    ~~indemnitor shall reimburse that indemnitor a percentage of costs~~
- 27    ~~and fees actually incurred by the indemnitor in that defense,~~

1 equal to that indemnitee's percentage of comparative negligence  
2 or comparative willful misconduct.

3 ~~(c) This section does not affect the validity of any workers'~~  
4 ~~compensation insurance.~~

5 ~~(d) Nothing in this section modifies the standards of liability~~  
6 ~~for design professionals in Section 936.~~

7 ~~(e) This section is not intended to operate retroactively and~~  
8 ~~therefore shall only apply to construction contracts entered into~~  
9 ~~on or after January 1, 2006.~~

O